



EX PARTE OR LATE FILED

September 5, 1997

**Gary L. Phillips**  
Director of Legal Affairs  
Washington Office

RECEIVED

SEP - 5 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC

Re: **Ex Parte Presentation**  
CC Docket 96-149 and  
File Number E-97-17

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On Thursday, September 4, 1997, Ms. Lynn Starr and I met with Mr. Christopher Heimann and Ms. Katherine Schroder of the Common Carrier Bureau to discuss MCI's Petition for Declaratory Ruling regarding the joint marketing restriction in Section 271(e)(1) (CC Docket 96-149). The attached material was used as part of our discussion.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Phillips".

Attachment

cc: C. Heimann  
K. Schroder  
S. Mukhoty


No. of Copies rec'd  
List ABCDE

0+2



CERTIFICATE OF SERVICE

I, Toni R. Acton, do hereby certify that a copy of the foregoing Ameritech Ex Parte has been served on the party listed below, by first class mail, postage prepaid, on this 5th day of September 1997.

By:   
Toni R. Acton

Frank W. Krogh  
Lisa B. Smith  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

DOCKET 96-149 (MCI JOINT MARKETING PETITION)  
AMERITECH EX PARTE, SEPTEMBER 4, 1997

- 96-149 provides illustrative examples of activities that would constitute joint marketing. Those examples include offering or advertising bundling or one-stop shopping. MCI claims that these examples should be deemed definitive, that any expansion of them would have a chilling effect on marketing.
- We are concerned for several reasons:
  - Importance of joint marketing. As virtually every consumer survey shows, joint marketing is the name of the game. The large majority of consumers want the simplicity and value offered by joint marketing. *And once they commit themselves to a single carrier for multiple services it becomes that much harder to compete for them, especially if the carrier has thrown in all kinds of incentives, such as frequent flier programs and other types of loyalty programs. THUS TIMING IS EVERYTHING, AS CONGRESS RECOGNIZED WHEN IT ENACTED SECTION 271(E)(1).*
  - Some IXC's have taken FCC decision in 96-149 as a signal that the FCC is not interested in enforcing section 271(e)(1), and they seek to push the envelope beyond what even the watered-down FCC rules permit:
  - In some cases, the violations are blatant. See MCI Internet page (attached).
  - In others, they are more subtle, and those "more subtle" violations are what this proceeding is all about:
    - MCI seeks carte blanche to violate spirit of rules by strongly *implying* the availability of one-stop shopping and/or bundled packages, while insulating itself from liability by avoiding explicit mention of such.
    - That is why it claims "clarification" is necessary and talks about "chilling" of its First Amendment rights.
  - Marketing materials at issue in this proceeding demonstrate this strategy.
    - Having convinced the FCC that IXC's should be able to offer a single point of contact for repair and maintenance and single bills, IXC's now tout these advantages as advantages that can

only be obtained if you purchase both local and long-distance service from them.

- Worse yet, they do so using language that is deliberately designed to convey the impression that these benefits are the tip of the iceberg. The very theme of these ads - the buzzword used over and over again - is "simplicity."
  - MCI claim that ad it is not engaging in joint marketing since ad was sent to existing long-distance customers is red herring.
- The strategy is self-evident: avoid specific mention of one-stop shopping and bundled packages and you're safe - you're not joint marketing - even if the ads would lead a reasonable person to assume that you provide one-stop shopping and/or bundled discount packages.
- Other contexts in which MCI seeks to push the envelope:
  - Failing to include clear and accurate information as to who is eligible for bundled packages and one-stop shopping.
  - Position that 271(e)(1) doesn't even apply until after IXC has begun reselling BOC services on a commercial basis.
    - Pre-service advertising blitz to generate inbound calls.
    - Policing problems.

#### Ameritech Recommendations:

- FCC must ensure that marketing materials convey in a clear, accurate, and non-misleading fashion what IXCs can and cannot provide and to whom.

#### *In areas in which joint marketing is not permitted:*

- If IXCs jointly advertise local and long-distance in areas in which they are not permitted to engage in joint marketing, they must include separate telephone numbers for ordering local and long-distance.
  - Easily applied rule that will help dispel any incorrect implication. (No separate sales force necessary).
- Ads should include the disclaimer used by AT&T in the attached ad.

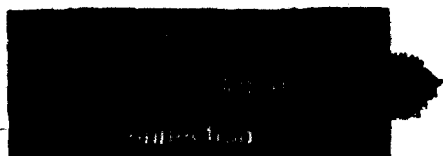
- If ads are placed in multiple geographic editions of a newspaper, and some of those editions are circulated in areas where the carrier relies exclusively on resale, these rules should apply to those editions.

*If ad is circulated to customers served via resale and an IXC's own facilities:*

- If the carrier is jointly marketing local and long distance services through media that reach customers served through its own facilities as well as on a resale basis, the ad should clearly indicate that one-stop shopping and discounted packages are only available to customers that the IXC can serve with its own facilities or those of a CLEC.

*Disclaimers must be reasonably prominent*

- IXCs should not be allowed to bury these disclaimers in tiny print or to place them amidst a series of disclaimers. They should be reasonably prominent such that customers are as likely to read the disclaimer as the text of the ad itself.
- IXCs should not be able to rely on oblique references to "larger businesses" when some larger businesses cannot be served through the carriers own facilities.



## **MCI Local Service**

### **About Local Service**

**MCI Local Service Options** | **Advantages of MCI's Integrated Service** | **What to Look For in a Local Provider** | **Network Reliability** | **Find Out More**

## **What to Look For in a Local Provider**

Now that you have a choice in your local telecommunications service, you need to know what to look for in a local provider. You also need to know that just one company is setting the standard in providing both local and long distance service - that company is MCI.

- Will your local provider offer one-stop-shopping for all of your telecommunications needs - including local service, long distance, Internet, paging and cellular - all from one company? MCI will.
- Will you be able to combine your local service and long distance usage to take advantage of volume discounts to reduce your overall costs? You will with MCI.\*
- Will you receive an integrated invoice for local service and long distance service that is easy to understand and track and requires just one easy payment each month? With MCI you will.
- Will you have a dedicated account representative to serve all of your communications needs and offer better solutions for your business? With MCI the answer is Yes!
- Will you have a local service team of experts dedicated to giving complete attention to your local network needs? With MCI you will.
- Will your local service provider offer SONET fiber optic network architecture, providing the capacity, flexibility, and reliability needed for today's communications? With MCI, the answer is Yes!\*\*\*
- Will your network be self-healing and proactively monitored for both local and long distance to guard your business against network outages - 24 hours a day, 365 days a year? With MCI it will.

With MCI Local Service, the answer is Yes.

As an MCI Local Service customer, you'll receive:

- An integrated, feature-rich set of service offerings
- A single integrated invoice
- Enhancement of your MCI long distance volume discount
- End-to-end network trouble management
- Simplified communications management

### **Find Out More**

- \* Cross-volume discounts not available where MCI furnishes local services utilizing resold facilities.
- \*\* SONET fiber optic network architecture available in select cities.

**Copyright 1997, MCI Telecommunications Corporation. All Rights Reserved. The names, logos, taglines and icons identifying MCI's products and services are proprietary marks of MCI Communications Corporation.**

## one less thing to think about

Whether you're calling around the world or across the street, now you can count on the company you trust for long distance to handle your local calls, too.\*



## one bill

Each month, you'll receive one easy-to-read phone bill from AT&T, for all of your local and long distance calls.

## one number for customer service

You'll get a single reliable resource for AT&T Customer Service, available 24 hours a day, 365 days a year.

## simply choose the plan that's right for you:

### plan

400 local calls

- \$12.80 per month
- simple flat rate of 6¢ for each additional direct-dialed local call

### plan

50 local calls

- \$10.00 per month
- simple flat rate of 6¢ for each additional direct-dialed local call

If these aren't exactly what you're looking for, you can also ask about our unlimited local calling plan. Before calling, be sure to check the back of this brochure for more ways AT&T can make your phone service simpler. Offers are available in Ameritech areas only. Plan prices don't include taxes or government-mandated fees.

\*Local and long distance services are sold separately.



## call to sign up

toll free 1 888 288-7523

ext. 40340



It's all within your reach.



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 23 '97

FEDERAL COMMUNICATIONS  
COMMISSION  
OFFICE OF SECRETARY

Ameritech Corporation,	)	
	)	
Complainant,	)	
	)	File No. E-97-17
v.	)	
	)	
MCI Telecommunications Corporation	)	
	)	
Defendant.	)	

AMERITECH MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO  
MCI MOTION FOR SUMMARY JUDGMENT

Ameritech Corporation (Ameritech) hereby responds to the Motion for Summary Judgment, filed by defendant, MCI Telecommunications Corp. (MCI) in the above-captioned proceeding. For the reasons stated below, MCI's Motion should be denied. Moreover, since the undisputed facts demonstrate that Ameritech, not MCI, is entitled to summary judgment, Ameritech respectfully requests that the Commission enter summary judgment in favor of Ameritech and that it find, in particular, that MCI has violated section 271(e)(1) of the Telecommunications Act of 1996 (the 1996 Act) and Commission regulations promulgated thereunder.

Section 271(e)(1) of the 1996 Act prohibits the largest interexchange carriers, including MCI, from jointly marketing interLATA services with resold local exchange services obtained from a Bell operating company (BOC) until that

BOC has received interLATA authority, or 36 months have passed from the date of enactment. In the Non-Accounting Safeguards Order, the Commission held that this provision prohibits covered interexchange carriers from selling resold local and long-distance services in a single transaction (i.e., through "one-stop shopping") or from offering "bundled packages" of resold local and long-distance services."<sup>1</sup> The Commission held, further, that:

a covered interexchange carrier may advertise the availability of interLATA services and BOC resold local services in a single advertisement, but such carrier may not mislead the public by stating or implying that it may offer bundled packages of interLATA service and BOC resold service, or that it can provide "one-stop shopping" of both services through a single transaction.<sup>2</sup>

This holding is codified in section 53.100(c) of the Commission's rules. The Commission additionally indicated that other practices, not specifically addressed by its rules, might well violate section 271(e)(1) of the Act, and it promised that in enforcing this statutory section, it would "examine the specific facts closely to ensure that covered interexchange carriers are not contravening the letter and spirit of the congressional prohibition on joint marketing by

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<sup>1</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996. The Commission described bundling as, "among other things, providing a discount if a customer purchases both interLATA services and BOC resold local services; conditioning the purchase of one type of service on the purchase of the other; and offering both interLATA services and BOC resold local services as a single combined product. Non-Accounting Safeguards Order at para. 277.

<sup>2</sup> Id. at para. 280.

conveying the appearance of “one-stop shopping” BOC resold local services and interLATA services to potential customers.”<sup>3</sup>

Ameritech brought this Amended Complaint after MCI ran ads in the major daily newspapers in Illinois, Michigan, and Ohio announcing the availability of one-stop shopping and bundled packages of local and long-distance service. In its Amended Complaint, Ameritech alleges these ads are misleading and, therefore, violate section 271(e)(1) of the 1996 Act and section 53.100(c) of the Commission’s rules because: (i) they advertise the availability of one-stop shopping and bundled discounts for local and long-distance services in areas where MCI lacks its own facilities and is reselling or plans to resell Ameritech local exchange services; and (ii) they do not adequately describe the class or location of customers eligible for these offers.

In its Answer and in its Motion for Summary Judgment, MCI does not dispute the critical facts. In particular, MCI does not dispute that: (1) on four separate occasions, it ran advertisements in the Chicago Tribune, Detroit News, Detroit Free Press, and the Cleveland Plain Dealer; (2) those advertisements announced the availability of “one-stop shopping” and bundled packages of local and long-distance services; (3) those advertisements were placed in editions of the Chicago Tribune that are circulated in areas in which MCI is currently reselling Ameritech local exchange services; (4) the advertisements were placed in editions of the Detroit News, Detroit Free Press, and Cleveland Plain Dealer

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<sup>3</sup> Id. at para. 282 (emphasis added).

that are circulated in areas in which MCI "quite possibly" will resell Ameritech local exchange services;<sup>4</sup> (5) the ads do not include any warning or disclaimer that would inform customers in those areas that MCI may not now offer them one-stop shopping or bundled service packages.

These undisputed facts demonstrate a clear-cut violation of section 271(e)(1) of the 1996 Act and section 53.100(c) of the Commission's rules. By advertising the availability of one-stop shopping and bundled service packages in areas where MCI is now, or soon will be, reselling Ameritech local exchange services – areas where MCI has no facilities of its own and is thus prohibited from offering bundling and one-stop shopping - MCI has misled customers as to the availability of bundled packages and one-stop shopping opportunities. Specifically, it has misled customers to whom MCI is, or soon will be, reselling services into believing that MCI can offer them the benefits associated with joint marketing, when, in fact, MCI cannot.

According to MCI, these facts are immaterial. Pointing to a single reference mid-way through the ad to "larger businesses," MCI asks the Commission to conclude that: (1) the joint marketing ad is by its terms expressly

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<sup>4</sup> In its Amended Complaint, Ameritech alleged, on information and belief, that MCI is currently reselling Ameritech local exchange services in the Chicago and Detroit areas. It alleged that MCI intends to resell Ameritech services in Cleveland and its surrounding suburbs. MCI admitted that it currently resells Ameritech services in and around Chicago. It claimed that it "quite possibly" will resell services in and around Detroit and Cleveland, although it denied having made an "irrevocable decision" to do so. Insofar as hardly any decision is "irrevocable," Ameritech believes that MCI has essentially conceded that it intends to resell Ameritech services in and around Detroit and Cleveland, subject, of course, to the virtually meaningless caveat that it can always change its mind.

limited to larger businesses; and (2) since MCI does not currently resell Ameritech services to larger businesses, the ad does not jointly market resold Ameritech service with MCI long-distance services.

This defense is facially inadequate. First, the single reference in the joint marketing ad to larger businesses hardly constitutes a clear disclaimer that the benefits touted therein are available only to larger businesses. Indeed, the eye-catching headline in the ad ("Complete Telecommunications Bundling. Only from MCI") is in no way limited to any class of customers, much less "larger businesses. If MCI had wanted to "clearly aim" the ad at larger businesses, it surely could have done so. It did not. At best, the ad is deliberately ambiguous as to whom it targets.

Because the ad does not make it clear that the benefits described therein are available only to larger businesses, MCI's defense - that the ad marketed services only to customers that it does not currently serve through resale - must fail. No further analysis is necessary. However, even if the joint marketing ad were explicitly limited by its terms to "larger businesses," that limitation would not suffice. Section 271(e) permits joint marketing only to customers that MCI can serve via its own facilities.<sup>5</sup> Many larger businesses to whom this ad was circulated are located in areas where MCI has no facilities and where MCI is, or soon will be, making Ameritech services available through resale. The ad

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<sup>5</sup> Those facilities include network elements MCI has obtained from a local exchange carrier.

misleads those customers into thinking that they may avail themselves of the benefits of joint marketing, when, in fact, they may not.

MCI tries to wiggle its way around this problem by claiming that it was not marketing resold services at all because none of its existing larger business customers is served through resale. MCI pointedly does not say, however, that it will not resell Ameritech services to larger businesses.<sup>6</sup> Nor could MCI make such a representation because, as a common carrier, it has an obligation to serve all customers indiscriminately. This common carrier obligation is reflected in MCI's tariffs, which, by their terms, are available to all business and residential customers in the geographic areas it serves. Thus, MCI could not - and certainly would not - turn away larger businesses and other customers who may have responded to the ad from locations in which MCI is reselling Ameritech services.<sup>7</sup>

Moreover, even with respect to areas where MCI is not yet reselling services to customers, its defense makes no sense. Under MCI's theory of the law, MCI would be free to engage in an advertising blitz touting the benefits of joint marketing at any time prior to actually initiating its resale offering. It

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<sup>6</sup> It is not unlikely that a number of larger businesses - as well as other customers - in areas where MCI is or will be reselling Ameritech services responded to this ad. MCI might well have marketed resold services to such customers, perhaps, even with the promise of future bundled packages and one-stop shopping.

<sup>7</sup> MCI claims that it does not resell Ameritech services to business customers. Whether or not MCI actually succeeded in signing up any such customers for its resold offerings is one factor to be considered in calculating damages, but it is not relevant to the issue of liability.

could thus use the false bait of one-stop shopping to increase customer interest in its pending resale offering and to generate large volumes of inbound customer calls. MCI could then escape liability by claiming that its ad was published before it had any resale customers and that, despite the absence of any express limitation, the ad was "really" directed to its facilities-based customers.

Obviously, such a reading of section 271(e)(1) would make a mockery of that provision. It is surely inconsistent with section 53.100(c) of the Commission's rules and with the Commission's promise to enforce section 271(e)(1) "to ensure that covered interexchange carriers are not contravening the letter and spirit of the congressional prohibition on joint marketing by conveying the appearance of "one-stop shopping" BOC resold local services and interLATA services to potential customers."<sup>8</sup> Moreover, it would make it virtually impossible for the Commission to police section 271(e)(1), since there would be no way to ensure that MCI was not, in fact, providing one-stop shopping and bundled packages to customers who did respond to the ad.

The only reading of section 271(e)(1) that makes sense is one that requires MCI to advertise in an accurate and non-misleading fashion as to what it can and cannot provide, and to whom. This requires that if a covered interexchange carrier advertises the benefits of joint marketing in an area in which it is reselling or will resell BOC services, the ad must inform customers that those benefits are not available to customers that MCI cannot serve with its own facilities.

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<sup>8</sup> Non-Accounting Safeguards Order at para. 282.

This is not a burdensome requirement. In fact, it is a requirement with which MCI has demonstrated it can comply. Specifically, in a joint marketing ad that MCI ran in California, MCI states: "Offer only for large businesses with local service over MCI-owned facilities. Not available in all areas."<sup>9</sup> Similarly, for at least the past two months, MCI's web site, which advertises both one-stop shopping and "cross-volume discounts," has included the following disclaimer: "Cross-volume discounts not available where MCI furnishes local services utilizing resold facilities."<sup>10</sup> MCI provided no such clarifying statements in the joint marketing ads that are the subject of this complaint. For that reason, they are misleading, and they violate section 271(e)(1) of the 1996 Act and Commission rules.

MCI claims, without support, that Ameritech's claim is barred by the First Amendment. This assertion is specious. While the First Amendment protects the dissemination of truthful and nonmisleading commercial messages about lawful products and services, it does not confer a right to deceive the public. As the Commission noted in the Non-Accounting Safeguards Order: "[T]he government 'may require commercial messages to appear in such a form, or

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<sup>9</sup> See Attachment A. Aside from the fact that no reader would likely see this disclaimer because of its placement in the ad and the type size MCI used, textually, at least, it satisfies the requirements of the Act and Commission rules.

<sup>10</sup> See Attachment B. While this disclaimer may suffice for purposes of MCI's advertised "cross-volume discounts," MCI does not include any similar disclaimer that would indicate that one-stop shopping is not universally available. The failure of MCI to include such a limitation is another example of what is, at best, MCI's carelessness with respect to section 271(e)(1) and, at worst, a more calculated decision to flout that provision.



include such additional information, warnings and disclaimers, as are necessary to prevent its being deceptive.”<sup>11</sup> MCI’s ad is unlawful precisely because it did not contain any “such additional information, warnings and disclaimers.” It is unlawful because it was deceptive.

### Conclusion

As a practical matter, what MCI here argues is that it has the right to generate inbound calls by confusing telecommunications users into thinking that they can obtain the benefits of one-stop shopping and bundled service packages, when, in fact, they cannot. Congress, knowing the draw that one-stop shopping and bundled packages would hold for the public, prohibited such marketing tactics by the largest interexchange carriers until the incumbent Bell operating company entered the long-distance market and created viable full service competition. The Commission’s rules incorporate this prohibition. Because MCI

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<sup>11</sup> Non-Accounting Safeguards Order at para. 280, quoting 44 Liquormart, Inc. v. Rhode Island, 116 S.Ct. 1495, 1505, n. 7 (1996).

has blatantly violated these provisions, its Motion for Summary Judgment must be denied. Instead, the Commission should grant Ameritech's Motion for Summary Judgment.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Gary L. Phillips".

---

Gary L. Phillips  
Counsel for Ameritech  
1401 H Street, N.W. Suite 1020  
Washington, D.C. 20005  
(202) 326-3817

June 23, 1997

**ATTACHMENT A**

Chances are,  
the only thing your  
local phone monopoly  
guarantees  
is a monthly bill.

Satisfaction Guarantee for MCI Local Business Service.

Now you can choose between what your local monopoly offers and the kinds of efficiencies and economies only MCI<sup>®</sup> can offer larger businesses in San Francisco. Like having your local, long distance, international, data, conferencing, cellular, paging and Internet services all on one bill. With volume discounts based on your total spending across all of your locations. One contract and one contact, always at your service. If all that's not enough to make you consider switching, then consider this: If you're unhappy with our local service for any reason any time during your first year, we'll give you one month free.\* For more information on MCI Local Service visit <http://www.mci.com/localservice> or call your MCI sales representative.

Is this a great time, or what? :-)



©2001 Telecommunications Corporation. 1001. All rights reserved. Is this a great time, or what? is a service mark of MCI. \*Max. bill credits during each 12-month period. Credit also not earned \$4,000 per location. Excludes opt-out services, directory assistance & toll charges. Offer does not apply to all areas. Offer only for large businesses with local service over MCI postal facilities. May vary by area. Offer not available in all areas. Offer not available in all areas. Offer not available in all areas.



Is this a great time, or what? :-)

©MCI Telecommunications Corporation, 1987. All rights reserved. Is this a great time, or what? is a service mark of MCI. \*Min. two credits during each six-month period. Credits may not exceed \$4,000 per location. Excludes operator services, directory assistance & toll charges. Other terms apply. Must sign up by 8/31/87. Offer only for large businesses with local service over MCI-owned facilities. Not available in all areas. Call for restrictions.

**ATTACHMENT B**



## **MCI Local Service**

### **About Local Service**

**MCI Local Service Options** | **Advantages of MCI's Integrated Service** | **What to Look For in a Local Provider** | **Network Reliability** | **Find Out More**

### **What to Look For in a Local Provider**

Now that you have a choice in your local telecommunications service, you need to know what to look for in a local provider. You also need to know that just one company is setting the standard in providing both local and long distance service - that company is MCI.

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- A single integrated invoice
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- End-to-end network trouble management
- Simplified communications management

### **Find Out More**

- \* Cross-volume discounts not available where MCI furnishes local services utilizing resold facilities.
- \*\* SONET fiber optic network architecture available in select cities.

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**CERTIFICATE OF SERVICE**

I, Halley Shoenberg, do hereby certify that a copy of the foregoing Ameritech Motion for Summary Judgment and Opposition to MCI Motion for Summary Judgment has been mailed, by first class mail, to the persons listed below on this 23rd day of June 1997.

By: Halley Shoenberg  
Halley Shoenberg

Frank W. Krogh  
Lisa B. Smith  
MCI Telecommunications Corporation  
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